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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN FRANCISCO DIVISION**

20 EPIC GAMES, INC.,

21
22 Plaintiff,

23 v.

24 GOOGLE LLC et al.,

25 Defendants.
26
27
28

Case No. 3:20-CV-05671-JD

**EPIC GAMES, INC'S
ADMINISTRATIVE MOTION TO
SEAL PORTIONS OF ITS FIRST
AMENDED COMPLAINT**

1 Pursuant to Civil Local Rules 7-11 and 79-5(d) and (e), Plaintiff Epic Games, Inc.
2 (“Epic”) hereby moves the Court to issue an administrative order on the filing under seal of
3 certain portions of Epic’s First Amended Complaint for Injunctive Relief (“Epic’s First
4 Amended Complaint”). A public redacted version of Epic’s First Amended Complaint has
5 been filed in accordance with this Court’s Local Rules and pursuant to the Court’s July 7, 2021
6 Order.

7 Subsection (e) of Civil Local Rule 79-5 sets forth procedures that apply when a party
8 seeks to file information designated as confidential by the opposing party. Under
9 subsection (e), the submitting party’s “declaration in support of the Administrative Motion to
10 File Under Seal must identify the document or portions thereof which contain the designated
11 confidential material and identify the party that has designated the material as confidential (‘the
12 Designating Party’)”. Pursuant to subsection (e)(1) of Local Rule 79-5, the Designating Party
13 then has 4 days to file a declaration establishing that all of the designated material is “sealable”.
14 Civil Local Rule 79-5 provides that documents, or portions thereof, may be sealed if a party
15 “establishes that the documents, or portions thereof, are privileged, protectable as a trade secret
16 or otherwise entitled to protection under the law”. Civ. L.R. 79-5(b). “A strong presumption
17 of access to judicial records applies fully to dispositive pleadings” and “‘compelling reasons’
18 must be shown to seal judicial records attached to a dispositive motion”. *Kamakana v. City &
19 Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (citations omitted). “[A] request to seal
20 all or part of a complaint must clearly meet the ‘compelling reasons’ standard and not the ‘good
21 cause’ standard” for sealing. *In re NVIDIA Corp. Derivative Litigation*, 2008 WL 1859067, at
22 *3 (N.D. Cal. Apr. 23, 2008); *see also Delphix Corp. v. Actifio, Inc.*, 2014 WL 4145520, at *1
23 & n.2 (N.D. Cal. Aug. 20, 2014) (applying “compelling reasons” standard in evaluating
24 request to seal portions of amended complaint). Compelling reasons justifying the sealing of
25 court records generally exist “when such court files might have become a vehicle for improper
26 purposes, such as the use of records to gratify private spite, promote public scandal, circulate
27 libelous statements, or release trade secrets”. *Kamakana*, 447 F.3d at 1179 (internal quotation
28

marks omitted). However, “[t]he mere fact that the production of records may lead to a litigant’s embarrassment, incrimination, or exposure to further litigation will not, without more, compel the court to seal its records”. *Id.*

On July 20, 2021, counsel for Defendants Google LLC, Google Ireland Limited, Google Commerce Limited, Google Asia Pacific Pte. Limited, and Google Payment Corp. (collectively, “Google”) requested that Epic file a motion to seal any portions of its First Amended Complaint that are sourced from documents that Google has designated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL” pursuant to the Protective Order entered by the Court, ECF No. 143. Those portions are identified in the Declaration of M. Brent Byars submitted herewith and highlighted in the under seal version of the First Amended Complaint. As required by Civil Local Rule 79-5(e), Epic is serving Google with this Motion and its Declaration so that Google may submit the required declaration establishing that some or all of the material is sealable. Epic requests leave to file a written response in opposition to any submission from Google seeking the sealing of any portions of Epic’s First Amended Complaint.

Dated: July 21, 2021

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Respectfully submitted,

By: /s/ M. Brent Byars
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